IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

Bail Appl..No. 7257 of 2007()

C.R.NO..36/06 OF EXICSE RANGE, THIRUVANANTHAPURAM.

PETITIONER/ACCUSED NO.3

SOJAN JOSEPH, AGED 27 YEARS,
S/O.JOSEPH ANTONY, KANNITTACHIRA HOUSE,
KARIMADY P.O., AMBALAPPUZHA, ALAPPUZHA DISTRICT.

BY ADV. SRI.C.C.THOMAS

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
EXCISE INSPECTOR, EXCISE RANGE OFFICE,
THIRUVANANTHAPURAM, REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 7257 OF 2007

Dated this the 3rd day of December, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations in a crime registered under Sec.55(a) of the Kerala Abkari Act. The crux of the allegations is that a vehicle carrying 35 x 52 litres of spirit in a secret chamber in the vehicle was seized on 21/7/06. There were two persons in the vehicle. They were arrested. When they were interrogated, the involvement of accused 3 to 5 was revealed from such interrogation. All the five persons have been shown as accused in the report. The crux of the allegations is that the consignment of the contraband liquor was being imported into Kerala by accused 3 and 4. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that

the petitioner is absolutely innocent. He may be granted anticipatory bail now, it is prayed.

3. The learned Public Prosecutor opposes the application vehemently. The learned Public Prosecutor submits that all the available materials clearly reveal the complicity of the petitioner. The indications about the complicity of the petitioner are clearly available in the seizure mahazar as also the statements of the arrested accused persons recorded by the officials. In any view of the matter, there are no features in this case which would justify or warrant the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C., submits the learned Public Prosecutor.

4. The Case Diary has been placed before me for my perusal. I have perused the same. Having considered all the relevant inputs, I am satisfied that this is not a fit case where the extraordinary equitable discretion under Sec.438 of the Cr.P.C. can or ought to be invoked in favour of the petitioner. I agree with the learned Public Prosecutor that the available indications point to the culpability of the petitioner and this is a case where the petitioner must resort to the usual and normal course of appearing before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the

ordinary course.

5. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge